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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,898	01/22/2004	Alexander J. Somogyi	ORACL-01337US1	6166
80548	7590	09/02/2008		
Fliesler Meyer LLP 650 California Street 14th Floor San Francisco, CA 94108			EXAMINER SEYE, ABDOU K	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 09/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/762,898	Applicant(s) SOMOGYI ET AL.	
	Examiner Abdou Karim Seye	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/20/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-10 are pending in this application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3 Claims 1-10 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent Application No. **10/762944**. Although the conflicting claims are not identical, they are not patentably distinct from each other because the examined application claims are an obvious variation of the invention claimed in U.S. Patent Application No. **10/762944**. See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is — does any claim in the application define an invention that is anticipated by, or is merely an obvious variation of, an invention claimed in the patent? If the answer is yes, then an “obviousness-type” nonstatutory double patenting rejection may be appropriate. See MPEP 804 (II)(B)(1) Nonstatutory Double Patenting, Obvious-Type. The difference between the inventions defined by the conflicting claims is that **10/762944** recites a method for implementing a two-phase commit protocol while the instant application recites computer program product comprising program code for performing the method recited in **10/762944**. A person of ordinary skill in the art would conclude that it is

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obvious to have program code to instruct a computer to perform a method for implementing a two-phase commit protocol process.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

5. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The following claims language is unclear and indefinite:

As per claim 9, line 1, recites the limitation "the N". There is insufficient antecedent basis for the limitation in this claim.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that forms the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 5-6 and 10 are rejected under 35 U.S.C. 102 (e) as being anticipated by Flahert et al. (US 20030115276).

8. As to claims 1 and 6, Flahert teaches the invention as claimed including a computer program product for execution by a server computer for implementing a two-phase commit protocol, comprising:

computer code for dispatching a first two-phase commit protocol operation from a first thread to a second thread, the first two-phase commit protocol operation associated with a first resource and a first phase of two-phase commit protocol (FIG. 1: 110 and 120; and FIG. 2 : 220; FIG. 3; paragraph 18-24; and 59) ;

computer code for processing a second two-phase commit protocol operation by the first thread, the second two-phase commit protocol operation associated with a second resource and the first phase of two-phase commit protocol (paragraph 68-70); and

computer code for determining the first two-phase commit protocol operation is complete (paragraph 68).

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9. As to claims 5 and 10, Flahert teaches, computer code for reporting results of the first and second two-phase commit protocol to a log (paragraph 67).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103 (a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2-4 and 7-9, are rejected under 35 U.S.C. 103 (a) as being unpatentable over Flahert et al. (US 20030115276) in view of Doolittle et al (US 20020194377).

12. As to claim 2- 4 and 7-9, Flahert teaches the invention substantially as in claims 1 and 6 above. However, Flahert does not explicitly teach code for selecting an idle server thread to process the first two-phase commit protocol operation; computer code for determining available server threads in a server; wherein a thread pool manager determines the available server threads.

13. Whereas, in the same field of endeavor Doolittle discloses a mechanism for

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selecting a thread ; determining available thread pool; and a thread pool manager (paragraph 44).

14. It would be obvious to a person of ordinary skill in the art at the time the invention was made to modify Flahert's invention with Doolittle's invention to include a process that would selecting an idle server thread to process the first two-phase commit protocol operation; computer code for determining available server threads in a server; wherein a thread pool manager determines the available server threads. One would be motivated to selecting a thread from available thread pool in order to process the first two-phase commit protocol operation in order to dynamically manage a set of thread pools and to avoid deadlock situations (Doolittles's; paragraph 44).

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

Novaes et al. (US 6823356) discloses a method, system and program for serializing replicated transactions of a distributed computing environment.

Parkkinen. (US 20030145021) discloses a method, and arrangement for serially aligning database transactions.

Cotner et al. (US 5884327) discloses a system, method and program for performing two-phase commit with a coordinator that perform no logging.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abdou Karim Seye whose telephone number is 571-270-1062. The examiner can normally be reached on Monday - Friday 8:30 - 6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, An Meng can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Abdou Karim Seye/
Examiner, Art Unit 2194

/Li B. Zhen/
Primary Examiner, Art Unit 2194